IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL REVISION NO. 3560 OF 1999

DATE OF DECISION: December 07, 2006.

Parties Name

M/S New Krishi Sewak, Gurgaon

...PETITIONER

VERSUS

Smt. Bhagwati and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH

PRESENT: Mr. M.L.Sarin, Sr. Advocate, with Mr. D.B. Singh, Advocate, for the petitioner.

Mr. J.V. Yadav, Advocate,

JASBIR SINGH, J. (oral)

ORDER:

This revision petition has been filed against the order dated March 9, 1999, vide which objections, filed by the petitioner, in execution application were rejected. It is apparent from the records that Bhagwati Sharma, respondent No. 1, along with one Sarup Chand filed a civil suit against the petitioner and other co-sharers for partition of the house, built in Khasra No. 5411/1715, 1716, situated in Gurgaon. Petitioner was also impleaded as one of the defendants in that suit, in which, after looking into pleadings of the parties, the trial Court framed the issues. Issue No. 3 reads thus:-

"Whether the land in dispute is in possession of defendant No. 5 as in actual possession of the premises in dispute exclusively as tenant in para No. 1 ? OPD

While passing the preliminary decree in judgment dated August

3, 1987, following finding was given with regard to issue, reproduced above:

> "No arguments were addressed on this issue, as it was conceded that defendant No. 5, who is the tenant over the property has been tenant over it even before the death of Khubi Ram. As such the issue is decided accordingly."

It is not in dispute that the plaintiffs in that suit had inherited the property from their father Khubi Ram. Against the preliminary decree, matter went to the appellate Court, where Daya Ram, one of the co-sharers, had stated that on the basis of family settlement, he had become owner, of the portion of the property, in dispute, which is in possession of the petitioner. To say so, he has relied upon one lease deed, allegedly executed by him in favour of the petitioner. The appellate Court has negatived that plea and held that the property in dispute was joint and was inherited by all the co-sharers from their predecessor-in-interest Shri Khubi Ram. The decree-holders then filed application for execution, in which objection application was moved by the petitioner by stating that as it was a tenant over the property in dispute, which had fallen to the share of respondent No. 1, he cannot be thrown out in execution of the decree unless order is passed against him under the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973, (for short the Act). That plea did not find favour with the executing Court and his application was rejected by holding thus:

> "4. I have heard the contentions of both the counsels for the parties and have gone through the documents placed on the file. The main contentions of the counsel for the DH was that objector/JD New Krishi Sewak was never attorned him as his tenant over the suit land and, therefore, decree holder have

every right to seek physical possession from him. It is admitted case of the parties during Civil Suit that JD was tenant over the suit land. But, Daya Ram exclusively deals the tenant. This fact is not disputed that suit property was ancestral one and the decree holder along with other respondents were co-sharer. In a final decree of partition the yellow portion of the suit land was allotted to decree holder whereas, partition shown in green, red and violet colour had fallen to the share of Harish, Shanti Devi and Daya Ram respectively as per Ex. C1. Portion shown in yellow colour is already occupied by JD during life time of Khubi Ram the father of the parties. It is not established on file that the present decree holder has ever adjust JD as his tenant. However, while giving findings in Civil Suit No. 10/83 the issue No. 3 whether the land in dispute was in possession of defendant No. 5 (now JD) was framed and it was held that present JD was tenant over the property and has been tenant over it even before the death of Khubi Ram and this issue was decided accordingly.

5.On the other hand, ld. Counsel for the JD argued that since (JD No.4) is tenant over suit land from the very beginning before partitioned the suit land and is a tenant of all co-sharers including Decree holder. No ejectment order has been passed against him and therefore, decree holder has no right to eject him by way of execution of the decree of partition. However, in support of his contention, ld. Counsel for JD has not cited any law. On the other hand counsel for decree holder relying upon the case Ram Sarup Vs. Chanan Singh and others, Punjab

Law Reporter 1964 page 832 in this suit it was held that if a tenant let on the land by one co-sharer he cannot be a tenant of other co-sharer and can be ejected in a execution of partition decree. On the ground that a tenant on the joint land does not ipso facto become a tenant of the other co-sharers, unless they adopt him as a tenant by their own act or conduct. Such a tenant can be ejected in execution of partition decree obtained against the co-sharer who had let out the land to him, by other co-sharers.

6.Admittedly the suit land was let out to JD by one of co-sharer Daya Ram by executing the lease deed for 60 years and after partition decree holder has not adopted the JD as his tenant over that land. No such evidence is placed on file by JD. Since the fact of the present petition is fully covered by the facts of the authority cited above, therefore, objection filed by JD are hereby dismissed. The ld. Counsel for the JD has not cited any law in contrary to the authority referred above, therefore, objection petition dismiss finding no merit. Warrant of possession in respect of the suit land is hereby ordered to be issued for delivering the possession to the decree holder on filing of PF etc. Awaiting report on or before 22..4.99."

Shri M.L.Sarin, Senior Advocate, counsel for the petitioner, has stated that the dispute is squarely covered by the ratio of judgment of the Hon'ble Supreme Court in M/s Karta Ram Rameshwar Dass v. Ram Bilas and others, Judgments Today 2005(10) SC 135.

After hearing counsel for the parties, this Court feels that in view of ratio of the judgment of the Hon'ble Supreme Court, this revision

petition deserves to be allowed. In the judgment, referred to above, the Hon'ble Supreme Court dealt with a similar situation. In that dispute, while passing a decree for partition, it was specifically observed by the trial Court that the tenant be not ejected without getting any order passed against him under the Act. That finding was reversed by the appellate Court and was upheld by this Court. Matter went to the Hon'ble Supreme Court and after noting facts of the case, it was observed thus:

> "In view of the foregoing discussion, we hold that in a suit for partition filed by one co-sharer against another if a tenant is made party, he can object to the claim for partition if it is shown that the same was not bona fide and made with an oblique motive to overcome the rigors of rent control laws which protected eviction of tenant except on grounds set out in the relevant statute. After a partition is effected or a decree for partition is passed, it would be open to the co-sharers to evict a tenant from that portion of tenanted premises which had fallen in their respective shares by filing separate proceedings for eviction under rent control laws on the grounds enumerated thereunder. In the present case, the tenant failed to prove that the claim for partition was not bona fide. Therefore, final decree in the suit for partition has been rightly confirmed by the High Court but it was not justified in reversing decree of the trial court, which directed that the possession of the tenant could not be disturbed unless and until proceeding is initiated for its eviction under the Act, and in ordering for recovery of possession from the tenant of that portion of the tenanted premises which had fallen to the share of the plaintiff. In our

view, the trial court was quite justified in directing that possession of the tenant would not be disturbed and it can be evicted only in accordance with law by taking steps for eviction under the provisions of rent control legislation upon the grounds enumerated thereunder."

Shri J.V. Yadav, learned counsel for the respondent, has failed to show anything to the contrary. In view of ratio of the judgment, referred to above, this revision petition is allowed and the order passed by the executing Court is set aside. However, liberty is granted to the respondents owner to seek ejectment of the petitioner as per law.

December 07, 2006 (Jasbir Singh)
DKC Judge